

Form C: Complaint under Article 7 of (EC) Council Regulation No. 1/2003

I. Information concerning the complainant and the company/companies against which the complaint has been made

This complaint relates to the Commission's decision dated the 2nd of July 2008 declaring that mergers are compatible with the common market and the implementation of the EEA Agreement (Case COMP/M4942-Nokia/Navteq). The Commission has stated the following in its ruling: "On the 19th of February 2008, the Commission received a notification under Article 4 of the Merger Regulation, stating that Nokia Corporation (hereinafter referred to as "Nokia") would acquire full control over the company Navteq Corporation (hereinafter referred to as "Navteq", United States) within the meaning of Article 3.1(b) of said Regulation, through the purchase of shares."

One and a half years later, on the 28th of January 2010, I received a notification from Nav4All, the company whose global navigation system I use on my mobile phone, that Navteq (in which Nokia holds 100% of the shares) has terminated data supply to Nav4All, leading to a forced shut-down of the Nav4All navigation application within 3 days. Nav4All addressed the aforesaid notification letter to 27.6 million users.

As a user of the Nav4All navigation system, which is in use all over the world, I am directly affected by the aforesaid supply blockade of Navteq (a company fully controlled by Nokia). Since there is no comparable product in the market, and I will have to switch over to another navigation system that will cost € 30 to € 45 more per year, or am almost forced to purchase a Nokia device that permits free navigation, with fewer functionalities than were available to me under the Nav4All system, I hereby file the present complaint document with the European Commission.

II. Details of the alleged infringement, and factual evidence

I conducted an extensive search on the Internet, and found the following:

- a summary of the Commission's decision of the 2nd of July 2008, and
- publication 52009XC0224 (01) being the Commission's Notification - Guidelines concerning the Enforcement Priorities of the Commission in application of Article 82 of the EC Treaty to Exclusionary Acts by dominant undertakings (text portions relevant to the EEA), Official Journal of the European Union No. C. 045 dated 24/02/2009, pages 0007 to 0020.

I also conducted an extensive search on the Internet on notifications that in my view were relevant to this matter. These include the following Internet publications:

1. Nav4All's notification letter dated 28-01-2010, 16:30 GMT+1 addressed to 27.6 million users entitled "Nav4All navigation shut down by Navteq"
(<http://www.nav4all.com/site2/www.nav4all.com/eng/index.php>);

2. A comment on the notification of direct evidence of the exclusion strategy.

This comment dated 02-02-2010 concerns a Navteq user referring to an exclusive restriction imposed by Navteq, prohibiting the use of Navteq data in combination with data from other data providers. (<http://www.theinquirer.net/inquirer/news/1589787/nokia-squeeze-nav4all>);

3. A Reuters.com publication dated 21-01-2010, 8.22am EST entitled “Nokia to offer free navigation, TomTom shares dive” (<http://www.reuters.com/article/idUSTRE60K0YZ20100121>);
4. A Navteq press release in Eindhoven (The Netherlands) dated 02-01-2010;
5. A Nokia press release in Milan (Italy) dated 02-02-2010; (<http://www.gadgetblog.it/post/10283/nav4all-chiude-ecco-la-dichiarazione-ufficiale-di-navteq>);
6. Nokia’s sales-related press release dated 03-02-2010 stating: “1.4 million free navigators installed within a week” (http://www.google.com/hostednews/afp/article/ALeqM5hn-4Nx_FubehqOFpHxWAeCuElmf8A);
7. The fine is considered to be factored-in; it is merely a business investment, made to achieve a higher interest. See publication of the Mobile Phone Helpdesk Europe dated 29-01-2010 “Nav4All sidelined in a shadowy way” (<http://www.gsmhelpdesk.nl/en/read.php?id=4875&ch=1>).

Exclusive purchasing obligation / Exclusion Strategy and risks for Nav4All (points 2 and 5)

I contacted Nav4All (via the phone number available on nav4all.com) based on the aforesaid publication “Comment on the notification of direct evidence of the exclusion strategy”, and inquired whether Navteq had also imposed an exclusion clause on Nav4All, to the effect that Nav4All should exclusively use Navteq data. The director of Nav4All, Mr Hennie J.M. Groot Koerkamp, replied to this question in the affirmative, stating as follows:

“Yes, Navteq has indeed imposed a condition to this effect on Nav4All as well. The invitation that Nav4All received to commence negotiations on the extension of the agreement up to the 1st of January 2010, was accompanied by an attachment containing the following text, among others: “Navteq wants to help Nav4All to stay in the market (...) Nav4All has to accept the following conditions: (...) As soon as Nav4All will start commercially, Nav4All has to obligate itself to close a further contract with Navteq and not with any other 3rd party to use their maps.” (The deadline by which Nav4All was to become a chargeable service under the draft contract was 01.01.2010.) Nav4All accepted the condition, which was a pre-condition to starting negotiations with Navteq, in other words, Nav4All really did not have any alternative.”

Nav4All noted during the call that it interpreted the exclusive purchasing obligation (exclusion strategy), taking together with the deadline by which Nav4All was to become a chargeable service under the contract, as an implicit guarantee that Nav4All would be able to continue to count on Navteq supplying data in future contract extensions as well.

Nav4All noted that Navteq’s delivery conditions were transparent and applied to all Navteq customers. The only possible differentiation would be concerning the scope of the delivery. The price and other terms are fixed. This prevents discrimination amongst Navteq customers. There is therefore no room for negotiation.

Finally, Nav4All also stated that it would take more than one year to switch to TeleAtlas data. Nav4All added that they had not prepared for such an implementation, in view of the aforesaid exclusion clause, which was implicitly aimed at TeleAtlas.

I would like to comment that the content of Nav4All's notification concerning Navteq's delivery conditions matches Navteq's statements in its press release in Milan (Italy), see point 5.

CLAIM 1

The precondition prohibiting contracts with other data providers (the exclusive purchasing obligation) implies the exclusion of TeleAtlas, since the market is dominated by 2 data providers, namely Navteq and TeleAtlas. This is unlawful as against TeleAtlas, since it is a prohibited exclusionary strategy.

CLAIM 2

By excluding TeleAtlas with this exclusive purchasing obligation, Navteq achieved a supply monopoly, implying that Nav4All could not function without Navteq data. This led to a situation in which objectively speaking, Navteq data became indispensable in order to compete effectively in the market. In other words: The supply of the refused data (input) is objectively necessary for operators to be able to compete effectively on the market. Using an exclusive purchasing obligation/ an exclusionary strategy was unlawful as against Nav4All.

CLAIM 3

Through its actions, Navteq has achieved a position whereby it could easily destroy the Nav4All navigation system by refusing to supply data. Navteq had indeed also implicitly stipulated that Nav4All was not permitted to develop any alternative application using TeleAtlas data; because of the exclusive purchasing obligation Nav4All was not permitted to use TeleAtlas data. Navteq thereby created a situation in which it could easily destroy Nav4All through the non-delivery of its data. This actually happened when Nav4All reported an explosive growth curve to Navteq, and Nokia offered free navigation on its phones in January 2010. Stopping data supply in this situation was unlawful as against Nav4All.

It is also important in this context that Nokia acquired full control over Navteq less than 1.5 years ago, with the approval of the European Commission. These facts taken together seem to indicate a deliberate strategy on the part of Navteq/Nokia. It should also be mentioned that Nokia did not intervene in this business practice of Navteq. The question is whether the European Commission would have approved Nokia's acquisition of Navteq given the information that is now available.

CLAIM 4

This business practice of Navteq is contrary to European legislation. All consumers who do not possess the required Nokia device, will be victims of the same and will suffer loss.

Nokia sees its navigation system as a competitive weapon against other smartphone vendors (point no. 3)

Reuter's press release dated 21-01-2010, 8:22 am EST entitled "Nokia to offer free navigation, TomTom shares dive" [publication 3] provides a clear idea of Nokia's strategy with the launch of its "navigation for free". In my opinion, this strategy is unacceptable under competition law. I come to this conclusion particularly in view of the statement by Anssi Vanjoki, Head of Marketing in Nokia. Here are three quotes from this press release:

"Nokia hopes free navigation will bolster its flagging position in the global smartphone market. It sells more smartphones than any of its rivals, but it has lost ground to Apple and RIM.

"It will help us to sell smartphones," Anssi Vanjoki, head of marketing at Nokia, told Reuters in an interview. "It will serve as a defense to our product prices."

"Turn-by-turn navigation has been one of the key revenue sources for Nokia's services offering, and the company had said it expected one-third of its targeted 2 billion euros (\$2.84 billion) services revenue next year to come from navigation."

I have been a user of the Nav4All navigation with Navteq data for 5 years. I have been running Nav4All on Apple, Blackberry (RIM) and the Nokia 6230i phones for several years now. The first two quotes only apply if Nav4All can no longer be offered on the Apple and Blackberry. Indeed, only in that case Nokia would differentiate itself from Apple and RIM through its free navigation offer. I infer from this that a conscious strategy may have been developed to enable Nokia Smart Phones to compete with iPhones and Blackberries by forcing the Nav4All navigation system to shut down, as Navteq has done. Also giving the fact the the Nav4All navigation has been offered free of charge on all devices including Apple, Blackberry and of course all Nokia devices - including the Nokia S40 devices - for 5 years already.

The tests conducted, published on the Internet, show that the Nav4All navigation system functions at least as efficiently as Nokia's navigation system. The marketing strategy of the Nokia navigation system and its business model are almost identical to that of the Nav4All navigation system. The Nav4All website (www.nav4all.com) states that Nav4All also works on S40 Nokia devices, while Nokia's navigation system does not work on S40 devices. Furthermore, the Nav4All navigation system works on more than 1,000 different devices, including Blackberry (RIM), Sony Ericsson, Samsung, Motorola, Android, HTC, Nokia, LG, Iphone, Ipod etc. Finally, I would like to refer to the test reports on the website of the Dutch Navigation Systems Research Foundation (www.stichtingonderzoeknavigatiesystemen.nl), which attest to the high quality of the Nav4All navigation system.

If brief: The differentiating characteristic that Nokia claims for its telephones with free navigation, with which Nokia wishes to compete with Apple and RIM, can only exist in a situation in which Nav4All is removed from the scene. This seems to me to be a conscious marketing strategy of Nokia, taking into account the timing of the announcement by Anssi Vanjoki, the Head of Marketing of Nokia. For details of the dates and times of the various events, I would also like to refer to the content of the letter that Nav4All has sent to its 27.6 million customers. The Nav4All navigation system is at least as efficient as Nokia's system, and works on almost all smart phones, while the Nokia navigation system only works on Nokia's (new) symbian models. Navteq's shutdown of the Nav4All navigation affects all Nav4All navigation users, in other words, it also affects Nokia users. Nokia's free navigation package can only be used by Nav4All

customers to possess a symbian device from Nokia. The present shut-down directly benefits Nokia. These benefits are evidenced by quotation 3, and Nokia estimates them to be around 700 million Euros per year.

CLAIM 5

Without Navteq's shut-down of the Nav4All navigation system, Nokia would not have the reported competitive advantage over the other phone manufacturers (or the extra revenues that would follow from such an advantage). In this context, it is reprehensible why the Board of Directors of Nokia, as Navteq's owner, did not stop Nav4All's shut-down of Navteq. As the party taking over Navteq, Nokia knew, or should have known at least, that the shut-down of Nav4All with its 27.6 million customers is illegal and that Nokia would benefit from this unlawful action. Nokia therefore violated the regulations of the European Union. The consumer will suffer loss as a result.

From the point of view of competition law, I think it is important to note that the aforesaid default of Nokia has seriously disrupted the competition between Nokia and all the other phone manufacturers.

III. The findings of the Commission sought to be achieved by the Complaint, and the legitimacy of the complainant's interest

Viewing the situation as a consumer, it is obvious to me that a large corporation like Nokia, with a turnover of 50.7 billion Euros (2008) can apparently afford to engineer a situation in which a small business like Nav4All could be easily destroyed. I have provided information concerning the alleged infringement and factual evidence in sub-section II, and made five claims explaining the manner in which I believe Nokia/Navteq have infringed European (anti-trust) competition law. I have established that various parties have suffered damage as a result of this infringement of competition law:

1. the users of the Nav4All navigation system (this includes me);
2. Nav4All as a provider of an off-board navigation system;
3. TeleAtlas as the only alternative data provider to Navteq;
4. all mobile phone manufacturers/suppliers (see Claim 5).

With this complaint, I humbly appeal to the Commission to conduct an inquiry into the conduct of Nokia and Navteq in the markets relevant to these four points and to determine whether Nokia and Navteq have violated European competition laws and, if so, impose appropriate sanctions on them.

I think it is important to note that in particular, it should be examined whether the imposition of a fine would remove the advantage that Nokia/Navteq would gain by their actions, and whether the amount of the fine would operate as a sufficient deterrent to repetitions of such actions in the future. Personally, I am greatly perturbed that a company like Nav4All can be destroyed as I have described above, and that consumers collectively suffer the greatest financial loss.

Based on the market explosion indicated by Nav4All (see Nav4All's letter of notification, publication 1), with an exponential growth curve, I think it would be realistic to project a growth of up to 150 million customers in 2010. The loss to the consumer in such case would be between 4.5 and 6.75 billion Euros in 2010 (assuming that an alternative application costs between € 30 to € 45 per year). I would like to note with regard to the growth curve of Nav4All that, in relative terms, this is largely in line with the growth reported by Nokia during the first week after releasing its product in the market, namely 1.4 million "free-

installed navigators” (sales-related press release, publication 6). As regards the characterisation “in relative terms” above, I would like to note that Nav4All’s sales growth was expected to exceed Nokia’s sales, in view of Nokia’s smaller share in the navigation market (number of suitable devices).

I claim legitimacy of interest as a complainant under Article 7 of (EC) Council Regulation No 1/2003, on the grounds that I am a consumer who is suffering loss as a result of the abuse, in my view, of dominant market position by Navteq/Nokia. I have been using Nav4All for 5 years already and I am now forced to either purchase a Nokia device if I want to use free navigation, or to use an alternative, expensive application if I do not have a Nokia device and do not wish to buy one. If I opt for another navigation system, my loss is limited to € 30 to € 45 per year. If I have to purchase a new Nokia device, the loss I suffer will probably be greater.

It is obvious that, apart from the loss in the consumer market (the users of the navigation system), other parties also suffer a loss, as I have explained under points 2, 3 and 4. Nav4All has been destroyed by Nokia/Navteq and will be able to claim the loss of profits over the next 5 years as damages. TeleAtlas is gravely affected by Navteq’s exclusion clause, since it could not fill in the gap that resulted when Navteq stopped supplying data to Nav4All and it lost a data clients and income over the last years. Above that Navteq created a lock-in, because concerning the switching time and switching costs Nav4all was unable to contract with TeleAtlas. Mobile phone manufacturers will definitely suffer a revenue loss, but I do not have the required knowledge to make any assessment of the same.

IV. Proceedings instituted before the national competition authorities or national courts

My own loss of between € 30 to € 45 per year, is far too limited to submit a complaint before a national court. The legal costs involved would be too high. I file my complaint before the European Commission and not with the NMA (Dutch Competition Authority), since the geographic market is not limited to the Netherlands but covers the entire geographical area of the European Commission. Another reason for filing this complaint with the European Commission as a consumer is that, as a Europhile, I feel that this case is eminently suited to prove that the new Europe under the new Treaty is also keen to protect the interests of the small consumer. I think it would have a highly salutary effect on the bond between Europe and its citizens if my complaint were to be admitted and an official investigation conducted.

I hereby declare that the information contained in this document and in the Annexes has been submitted entirely in good faith.

Date, 10th February 2010 (Rotterdam, NL)